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**Docket # 2006-152**  
**562 Broadway**  
**Malden, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD DECISION**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and the informal rules of hearing procedures, 801 CMR 1.02, relative to a determination of the Malden Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Malden Lodge 1910 Loyal Order of Moose (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 562 Broadway, Malden, Massachusetts.

**B) Procedural History**

By written notice received by the Appellant on May 4, 2006, the Malden Fire Department issued a determination to the Appellant informing the organization about the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in the Appellant's building located at 562 Broadway, Malden, Massachusetts. The Appellant filed an appeal of said determination with this Board on June 16, 2006. The Board held a Pre-Hearing Status Conference on September 26, 2006 and the Board held an initial hearing on this matter on July 11, 2007. After brief deliberation, the Board continued the case for further information and hearing. After several further continuances at the request of the parties, a hearing was held on May 14, 2008, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant at the July 11, 2007 hearing were: Christopher G. Fallon, Esq. and Lodge Governor, Arthur Doherty. Appearing on behalf of the Malden Fire Department were Chief Michael Murphy and Assistant Chief John Colangeli.

Appearing on behalf of the Appellant at the May 14, 2008 hearing were: Christopher G. Fallon, Esq.; Arthur Doherty, Acting Lodge Governor and Henry Radnar, Administrator. Appearing for

the Malden Fire Department were Chief Michael Murphy; Assistant Chief John Colangeli and Scott Fitzpatrick, City of Malden Building Inspector.

Present for the Board at the May 14, 2008 hearing were were: Thomas Coulombe, Acting Chairman; Alexander MacLeod; John Mahan; Aime R. DeNault; and George A. Duhamel. Peter A. Senopoulos, Esquire, was the attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse, or modify the enforcement action/determination of the Malden Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G½?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Statement in support of Appeal
3. Letter to Representative of Appellant from Malden Fire Department
4. Order of Notice of the Malden Fire Department
5. Notice of Pre-Hearing Status Conference to the Appellant
6. Notice of Pre-Hearing Status Conference to Malden Fire Department
7. 1<sup>st</sup> Notice of Hearing to Parties
8. 2<sup>nd</sup> Notice of Hearing to Appellant
9. 2<sup>nd</sup> Notice of Hearing to the Malden Fire Department
10. Certificate of Inspection (December 2006)
11. Appellant's Pictures (A-K)
12. Floor Plan
13. Appellant's Proposed Findings of Fact
14. Fire Department Photos (A-D)
15. Letter to Parties regarding need for additional information
16. 3<sup>rd</sup> Notice of Hearing to Parties
17. 4<sup>th</sup> Notice of Hearing to Parties
18. 5<sup>th</sup> Notice of Hearing to Parties
19. 6<sup>th</sup> Notice of Hearing to Appellant
20. 6<sup>th</sup> Notice of Hearing to Malden Fire Department
21. Copies of two Memoranda that accompany Hearing Notices
22. Detailed Floor Plan of Facility
23. New Certificate of Inspection (issued 12/1/2007)

**E) Subsidiary Findings of Fact**

- 1) By Notice received by the Appellant on May 4, 2006, the Malden Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 562 Broadway, Malden, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½. The building at issue is owned and operated by the

Malden Lodge 1910, Loyal Order of Moose, a private non-profit organization. The Appellants filed their appeal of the Order with this Board on June 16, 2006.

- 2) At the outset of the hearing, it was noted that the makeup of the Board members constituting the Board panel at the prior hearing (July 11, 2007) and at the present hearing were different. The parties agreed, with the Board's concurrence, to continue the hearing with the present panel members, as long as said members had an opportunity to review the entire record, including the record of the previous hearing. The Board also indicated that they would give the parties the expanded ability to reemphasize and reintroduce evidence that was submitted and discussed at the previous hearing.
- 3) The Appellant organization operates a single-level, masonry/wood-constructed building with facilities for public assembly. The largest portion of the building is a large function hall with 4,080 s.f. of floor area and includes a separate service bar and rest rooms. Another portion of the facility consists of the members' bar area and the club quarters/game room.
- 4) At the July, 2007 hearing a Certificate of Inspection issued on 12-1-05 by the City of Malden was introduced into evidence. Said Certificate indicated a use group classification of "A-3" for the entire building with a total capacity of 480 persons and indicated separate occupancy limits including a capacity of 400 persons for the Function Hall and 80 persons for the Members Lounge. Appellant submitted a new, revised, Certificate of Inspection issued by the City (expiration date of December 1, 2008) which indicates the same "A-3" use group classification, but a reduction in the total capacity to 352 persons. The new Certificate indicates a new capacity of 272 persons for the Function Hall and the same, original capacity of 80 persons for the Members Lounge/Game Room.
- 5) The representatives of the Appellant indicated that the reduction of capacity in the function room was the result of the Appellant's submission, to the City Building Department, of a new floor plan with new occupant calculations created by an architect. Appellant asserts that, based upon the new capacity limit stated in the re-issued Certificate of Inspection, the function hall is now considered an "unconcentrated" occupant load and that this combined with other characteristics, meet the criteria that the board has established in prior decisions, which did not require a sprinkler system.
- 6) The Fire Department testified that the original determination to require that a sprinkler system was based upon the previous occupant load of the function hall. The Fire department indicated that the reduction plan was reviewed and approved by the City Building department. Neither the Building official nor the representatives of the Fire Department offered any evidence or objection to the capacity reduction or the process by which the reduction occurred.
- 7) With respect to the use characteristics of the function hall, the Appellant testified that the hall does feature events, which include music for dancing purposes or entertainment. However, during such events, the meal is the primary attraction. Examples of such events include wedding receptions, anniversaries, baby showers, birthdays, christenings, funerals, kids sports banquets, and other charitable events. When such entertainment is allowed, it typically consists of a DJ for music and dancing purposes, but a DJ and/or music is featured in approximately 20% of all

functions. The Appellant testified that the organization has strict rules regarding the noise levels of the music and lights. They indicated that at all such events, attendance is limited by pre-arrangement between the lodge and the event organizers through invitation only or advanced ticket sales. Tickets are not sold at the door. They indicated that the facility hosts only privately organized functions, not open to the public at large. They indicated that hall rentals can only be booked by members and their families. Non-members are not allowed to rent the function hall facility. They also indicated that at all such events, there is a set starting time and ending time, an agreed upon set-up and floor plan which details the placement of tables and that such placement is neatly arranged as not to create blocked egress. Appellant stated that all rentals are booked pursuant to a written contract, which contains the conditions involving the event.

- 8) According to the submitted written floor plan and Appellant's testimony, a solid wall exists which clearly divides and delineates the function hall portion of the building from the members' bar/lounge area. The lounge and the function areas have separate bar, bar service areas and rest rooms, which allow the function hall and the bar to operate independently. Both the function hall area and the bar area have separate occupant capacities and routes of egress. During function events, function hall patrons are not allowed entry to the members' bar and lounge (game room) area.
- 9) Appellant also indicated that although the lights in the function hall are capable of being dimmed, it is the practice of the organization not to do so on most occasions. There was "a disco ball" that is not now used and was previously used only in special lodge ceremonies, not dancing.
- 10) The Appellant contends that they now meet each of the seven criteria established in previous decisions involving privately organized dining events and that there is adequate fire safety measures throughout the facility, including 4 egresses from the function hall, two of which lead directly outside.
- 11) In support of the Malden Fire Department's position, Chief Murphy indicated that he is aware that there have been events such as fundraisers, where he believes tickets were sold at the door to the general public at large. He indicated that he has attended events, which in his opinion he believed featured entertainment as the main attraction and noted that there is a dance floor and lighting that is capable of being dimmed. The representatives for the Appellant denied that any tickets for any event had ever been sold at the door and reiterated that each event always has a pre-determined number of attendees. They indicated that if any distribution of tickets at the door had occurred, patrons were merely picking up tickets at the door that were prepaid and that such arrangement still allows the organizers to control attendance.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate

system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.

- 2) Based upon the most recent Certificate of Inspection and other evidence submitted to this Board, this facility features a combination of uses and activities. Clearly the building contains a bar/lounge area, which features, on a routine basis, bar-like characteristics. However, this facility also features a function hall. Buildings that feature combined characteristics such as bar, function or restaurant are fairly common throughout the Commonwealth, and present unique challenges in implementing the provisions of section 26G½. In an attempt to interpret the legislative intent of this law as applied to such establishments, the board will look to the plain language of the statute in rendering a determination. The Board notes that section 26G½, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “Every ... building or structure ...or **portions thereof**, of public assembly **with a capacity of 100 persons or more** that is designed or used for occupancy as a ...nightclub, dancehall discotheque, bar or similar entertainment purposes...”. In determining whether the sprinkler requirement will apply in this case and other similar cases that involve a building, which features a combination of characteristics, the Legislature’s use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. This language clearly envisions an analysis of the building’s characteristics and floor plan to determine if a reasonable separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building which may not be subject to the law. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:

1. Is that portion of the building used or designed as a bar reasonably apportioned and separate from the other areas of the building? In determining this question there must be a sufficient physical separation that exists between the entertainment or bar portion from the rest of the building, which prevents the occupants or activities of the bar from expanding into the dining area. Such separation can include a permanent wall or closed door. Additionally, there must be a separation in an operational or business context that exists, which assures that the activities that occur in the bar, or entertainment area do not overflow or expand into the other areas.
  2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 3) The characteristics of this establishment, as applied to the above analysis, indicate the existence of a physical separation between the bar area and the rest of the building, including the function hall, which prevents the bar activities to expand into the other areas of the building. This separation includes a permanent wall with a set of doors that are capable of closing. The bar area also has a separate and independent means of egress and separate restrooms. Additionally, there was testimony that a separation, in an operational and business context, exists which assures that the activities that occur in the bar area, do not overflow or expand into the function hall or other areas. The portion of the building used as a bar has a capacity of

80 persons, as indicated in the current certificate of inspection. This capacity is less than the statutory capacity of 100 persons or more, which would require the installation of sprinklers in this particular “bar” portion of the building.

- 4) With respect to the function hall portion of the building, it appears that it is used and/or rented out on a routine basis for a variety of different events. Some of these events feature music by DJ for dancing purposes. However, based upon the evidence, it appears that these events also feature a meal as the main attraction. Notwithstanding the incidental appearance of live or recorded music for dancing purposes, this board has concluded, in prior decisions, that under certain circumstances, a portion of a place of assembly which provides facilities for “organized private dining events” may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of the certain characteristics of such dining events is distinguishable from the “A-2 like use group ” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The factors that this board considers in such situations are as follows:

- a. The facility is used for events that feature a meal as the primary attraction.
- b. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
- c. Each event has a definite starting and ending time.
- d. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
- e. There are no significantly low lighting levels, and
- f. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6<sup>th</sup> Edition), table: 780 CMR 1008.1.2.
- g. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist. This determination does not preclude such a facility from ever hosting an event that features music by a live band or recording, dancing or similar entertainment as the main attraction. Under the provisions of M.G.L. c.148, s. 26G½, 4<sup>th</sup> paragraph, such a facility may be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the

head of the fire department in consultation with the local building inspector. The issuance of such a permit is a matter within the sole discretion of the head of the fire department who may set the terms and conditions to protect against fire and preserve public safety.

- 5) The board concludes that the social activities that occur within the function hall when music and dancing are also featured are considered “privately organized dining events” which feature a meal as the primary attraction. The board finds that the function area as currently used and described to the Board, meets the 7 characteristics as stated above. Accordingly, the function area is also not subject to the sprinkler requirements of s. 26G½, as long as the characteristics stated in section (F), paragraph (4), (a) through (g) are met for all events that feature music and dancing or similar entertainment.

**G) Decision and Order**

Although a bar area exists in this building, it is sufficiently apportioned and separated, both physically and operationally from the function hall and other areas of this building. This portion of the building, used or designed as a bar, does not have a legal capacity of 100 persons or more as required by s. 26G½ sprinkler mandate. The function hall, as currently operated is not used or designed as a nightclub, dancehall, discotheque, bar or for similar entertainment purpose since it does not present the characteristics typical of an “A-2 like” assembly use group. Additionally, this function hall area is sufficiently apportioned and separate from the remaining areas of the building. This function hall is also operationally operated separately from the remaining portions of the building including the bar area and club quarters.

For the foregoing reasons, this Board **reverses** the Order of the Malden Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½. This determination is conditioned upon:

1. The continued use and operation of the establishment in a manner consistent with the findings herein, including, the continual maintenance of the physical and operational separation of the activities of the function hall and the bar areas.
2. The establishment assures that the seven characteristics stated in Section (F) paragraph (4), (a) through (g), are consistently met for all events that feature music, dancing or similar entertainment activities unless such events are of a temporary nature and pursuant to a permit issued by the head of the Fire Department

**H) Vote of the Board**

Thomas Coulombe, Acting Chairman	In Favor
Alexander MacLeod	In Favor
John Mahan	In Favor
Aime DeNault	In Favor
George Duhamel	In Favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Thomas Coulombe, Acting Chairman

Dated: July 11, 2008

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:**

Christopher G. Fallon, Esq.  
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Chief Michael Murphy  
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